

## **MINUTES**

### **RULES COMMITTEE MEETING**

### **COMMISSION FOR MH/DD/SAS**

### **Holiday Inn Sunspree-Great Smokies**

**One Holiday Inn Drive  
Asheville, NC 28806**

**Tuesday, August 17, 2004**

#### **Attending:**

**Commission/Committee Members:** Floyd McCullouch, Chair, Anna Scheyett, Co-Chair, Lois Batten, Dorothy Crawford, Albert Fisher, Mazie Fleetwood, Ann Forbes, Ellen Holliman, Martha Martinat, Pender McElroy, Ellen Russell, Tom Ryba, Fredrica Stell

#### **Ex-Officio Members:**

**Excused:** Pearl Finch, Mary Kelly, Emily Moore, Marvin Swartz

**Others:** Peggy Balak, Cindy Kornegay, Flo Stein, Rich Slipsky, John L. Crawford, Leslie Evans, Janice Richardson, Blair Clark, Jerry Rice, Nancy Carey, Jennifer Sullivan

**Handouts:** Agenda; May 05, 2004 Minutes; Proposed Rules Language – 10A NCAC 27G .0104 and .4204 Qualified Substance Abuse Prevention Professional (QSAPP); 10A NCAC 28A .0101 and .0208 Seclusion and Restraint Rules – State Operated Services and Facilities; Rule Revision Plan

#### **Welcome, Introductions and Approval of Minutes**

Chair Floyd McCullouch called the meeting to order at 9:45 a.m.

A moment of silence was requested for our soldiers.

All members, staff and visitors made introductions.

A motion to approve the Minutes from the May 5, 2004 meeting with amendment, adding the word “meeting” after Rules Committee on page three, “Report/Update on Status of the LME/Provider Rules”, paragraph one. The motion passed unanimously.

#### **Proposed QSAPP Rules**

Cindy Kornegay gave an overview of the packet relating to the QSAPP rules and the reason for the amendments of these proposed rules. Session Law 2002-126 requires DHHS to ensure that qualified professionals provide substance abuse prevention services. The Commission for MH/DD/SAS has rulemaking authority for the subject matter of the proposed language. The proposed rule language was published in the 06/15/2004 issue of the NC Register and no comments were received. The Division is requesting a favorable report from the Rules Committee to take to the full Commission on August 18 in order to receive final approval of the proposed amendments.

Ms. Kornegay introduced Flo Stein to explain the text of the proposed amendments.

Following discussion a motion was made and passed unanimously to revise the language in the proposed amendment of 10A NCAC 27G .04204 to clarify that the requirement for the director to meet QSAPP qualifications is specific to the director of substance abuse primary prevention services.

Three prevention professionals addressed the Rules Committee and spoke in support of the proposed amendments. The Rules Committee passed a motion to give a favorable report recommending that the full Commission approve the proposed rule language including revised language clarifying 10A NCAC 27G .4202 as described in the previous paragraph.

#### **Proposed Seclusion and Restraint Rules Applicable to State Operated Services/Facilities**

Cindy Kornegay gave an overview of the packet relating to the seclusion and restraint rules and the reason for the amendments to the proposed rules. The proposed amendments are necessary to fully implement the provisions of G.S. 122C-60. The statute requires the Commission to adopt rule relating to the use of physical restraint or seclusion of clients necessary to ensure the safety of clients and others. These amendments are needed in order to make revisions to rules applicable to state operated services/facilities to correspond with revisions applicable to community services/facilities that were previously adopted. The proposed rule language was published in the 06/15/2004 issue of the NC Register and no comments were received. The Division is requesting a favorable report from the Rules Committee to take to the full Commission on August 18 in order to receive final approval of the proposed amendments.

There was discussion concerning the proposed revision in 10A NCAC 28D .0208(b)(3), deletion of the term “foodstuffs” and addition of the term “substances.” There was concern expressed over whether the change would allow the use of non-food items. Ms. Kornegay clarified that the change in language was not intended to allow for the use of non-food items but to use a more commonplace terminology. There was also concern raised over the necessity of allowing the use of several of the other interventions specified in Paragraph (b) of this Rule. A motion was made and passed unanimously to

have Division staff present a follow-up report concerning these interventions at the next Rules Committee.

The Rules Committee passed a motion to give a favorable report recommending that the full Commission approve the proposed rule language as presented.

Pender McElroy initiated additional discussion concerning an issue that had been brought to his attention by Cynthia Temoschenko, GACPD. There is a difference in the definition of physical restraint contained in the rule applicable to the community, 10A NCAC 27C .0102 and the definition contained in the rule for state operated services/facilities, 28A .0102. Specifically, there is a distinction in the list of exclusions contained in the two rules. The state operated service/facility rule includes “therapeutic holds used solely for the purpose of escorting a client who is walking” as an exclusion from the definition. The community rule does not include this exclusion. Mr. McElroy requested this be considered an item requiring follow-up and that there be a discussion concerning the differences in the two definitions at the October Rules Committee meeting.

A question was raised asking the status of receiving the Attorney General’s opinion concerning authority to adopt rule to establish a formal complaint and appeal process for non-Medicaid eligible clients concerning LME decisions regarding treatment and services. The Governor’s Advocacy Council and Carolina Legal Assistance have requested that the Commission adopt rules to establish this system. Rich Slipsky, Attorney General’s Office responded. He explained the process for issuing a formal opinion and stated this request is in the internal review process within the Department of Justice. Mr. Slipsky stated the preliminary opinion is that the General Assembly has not given rulemaking authority concerning this subject to any agency. Mr. McElroy stated the Commission would consider its options and determine what if any action to take once the official opinion is rendered.

### **Rule Revision Plan**

Peggy Balak explained the proposed rule revision plan prepared by the Division. The plan lists all of the content areas of current MH/DD/SA rules and establishes a recommended priority for revision and/or review. The shaded area on page one of the plan reflects sections of rule that discussion has been initiated. The Division is recommending that larger sections of rules be reviewed for possible revision than has often occurred in the past so that it is easier to make all necessary changes in related or corresponding rules at one time. This would help reduce the need to review the same section of rules multiple times.

### **Other Discussion**

Martha Martinat thanked Mr. McElroy for following up on the Rules Committee’s request to have a letter sent on behalf of the Commission requesting assistance from the

Attorney General's Office in obtaining recommendations for a substance abuse appointee to the Commission as set forth in 143B-148.

The meeting adjourned at 11:30 p.m.